another solicitor denying the settlement. Unlike the case of *Hickman* v. *Berens*, this issue was tried before a judge and the two solicitors gave their conflicting versions on oath. Mr. Goh maintained there was a settlement. Mr. Edwin D'Souza, on the other hand, saying there was no settlement at all. After hearing the evidence, the learned trial judge came to the conclusion that the case had been settled.

It was further argued on behalf of the appellant that the 2nd plaintiff's solicitor, Mr. Edwin D'Souza, had no authority to settle the claim on behalf of his client at this sum of $5,200. This is not a point that was raised in the memorandum of appeal but in my view it has no substance. On the evidence it was clear that Mr. Edwin D'Souza had a general authority to settle for a reasonable figure. Counsel for the appellant has referred us to what he calls a number of contradictions in the 2nd plaintiff's evidence. These were all matters entirely for the discretion of the learned trial judge, a discretion which I see no reason whatever for disturbing. A further point raised was that there was a wrongful admission of a without prejudice letter but this, in my view, is without substance. For these reasons, therefore, in my judgment this appeal must be dismissed with costs. Deposit to respondent.

Wee Chong Jin C.J. and **Tan Ah Tah F.J.** concurred.

Appeal dismissed.

Solicitors: *Harbans Singh & Kamil; Braddell Bros.*

CHONG FOOK KAM & ANOR. v. SHAABAN BIN HUSSIEN & ORS.

[O.C.J. (Raja Azlan Shah J.) February 28, 1967]

[Raub — Civil Suit No. 35 of 1965]

Tort — Wrongful arrest — Damages for — Criminal Procedure Code (Cap. 6), s. 23(i)(a) — "Reasonable complaint" — Extent of power of police officer to arrest without warrant.

Criminal Law and Procedure — Illegal detention — Criminal Procedure Code (Cap. 6), s. 28 — Whether 24 hours period excludes time taken for journey.

On July 10, 1965, the defendants. police officers, received a complaint of a fatal hit-and-run road accident. Sawn timber had fallen from a lorry with a red bonnet and a trailer, and smashed the screen of a car following it, causing the death of a passenger, and injuries to three others. Road blocks were put up, and a lorry answering the description was found. The plaintiffs, its driver and attendant were apprehended at 7.55 a.m. and interrogated. Thereafter they were brought before a magistrate at 8.30 a.m. the following day, and were detained. As there was insufficient evidence to establish a case against them, the plaintiffs were released on July 13. In a claim for damages for wrongful arrest the plaintiffs alleged that they had been wrongfully arrested and illegally detained for more than 24 hours before they were brought before a magistrate.

Held: (1) under section 23(i)(a) of the Criminal Procedure Code, there must be a reasonable complaint before a police officer can arrest a person suspected of having committed a seizable offence without a warrant. Reasonable complaint requires an objective test — that is, a state of affairs which would lead a man of ordinary care and prudence to believe or entertain an honest and strong suspicion that the suspect is guilty of a seizable offence;

(2) the defendants were not guilty of wrongful arrest as there were facts within the cognisance of the defendants founded upon some tangible legal evidence which in the circumstances constituted reasonable complaint or suspicion;

(3) although the plaintiffs were arrested at 7.55 a.m. on July 11, and were brought before the magistrate at 8.30 a.m. on July 12, the allegation that they had been illegally detained for more than 24 hours could not stand. Section 28 of the Criminal Procedure Code expressly excludes from the 24 hour period, the necessary time taken for the journey in bringing the suspect before a magistrate. The journey from the place of arrest to the magistrate's court took more than an hour. It is therefore fair to say that in the circumstances the plaintiffs were in lawful custody well within 24 hours.

Cases referred to:—

(1) *Christie* v. *Leachinsky* [1947] A.C. 573.

(2) *Re Charn Chandra Majumdar*, A.I.R. 1917 Cal. 25.

(3) *Sabodh Chandra* v. *Emperor*, A.I.R. 1925 Cal. 278.

(4) *Tan Kay Teck & Anor.* v. *Attorney-General* [1957] M.L.J. 237.

(5) *John Lewis & Co. Ltd.* v. *Tims* [1952] 1 All E.R. 1203.

(6) *Dallison* v. *Caffery* [1964] 2 All E.R. 610.

(7) *Herniman* v. *Smith* [1938] 1 All E.R. 1; [1938] A.C. 305.

(8) *State of Hyderabad* v. *Kankadu*, A.I.R. 1954 Hyd. 89.

CIVIL SUIT.

D. R. Seenivasagam and *D. P. Xavier* for the plaintiffs.

Au Ah Wah (Senior Federal Counsel) for the defendants.

Cur. Adv. Vult.

Raja Azlan Shah J.: This case is nothing more than a reassertion and reapplication of the statutory powers of the police with regard to arrest without warrant.

The plaintiffs in this case claim damages against the defendants for wrongful arrest and detention. The first and second plaintiffs are respectively the attendant and driver of motor-lorry C. 8200 belonging to Temerloh Timber Trading Co. Ltd., 5th milestone, Karak Road. Mentakab. I will for the sake of convenience refer to them as the attendant and driver respectively. The first and second defendants are respectively the Area Inspector, Mentakab, and the O.C.P.D., Police District, Temerloh. I will refer to them as the inspector and O.C.P.D. respectively. It is common ground that the third defendant is their employer.

The facts that are not in dispute can be stated as follows: At about 9.25 p.m. on 10th July, 1965 a fatal road accident occurred at the 2nd milestone, Karak Road. One Kanniah was driving his motor-car BC. 6912 with four passengers. At about 9.25 p.m. he crossed a motor-lorry pulling a trailer loaded with sawn timber at the 2nd milestone, Karak Road. While doing so, a length of timber fell off the trailer and smashed the screen of the car, injuring three of the occupants and killing the fourth. As it was dark, Kanniah could not identify the registration number of the said lorry but he was positive that the lorry failed to stop and had proceeded in the direction of Mentakab. The inspector was subsequently informed of the fatal accident at 10.15 p.m. when Kanniah lodged a report at the police station. *Prima facie* an offence under section 304A of the Penal Code was disclosed. The inspector interrogated Kanniah who informed him of the description of the motor trailer and added that it had a red bonnet. The inspector then informed the O.C.P.D. who instructed him to put up road blocks at various places in order to stop for the purpose of interrogation any lorry with trailer answering to the description furnished by Kanniah. The inspector accordingly carried out the instruction. Together with Kanniah he also proceeded to the scene of the accident which was at a double bend and found broken glass on the grass verge as well as broken sawn timber. From there they went to see the deceased person at the mortuary. That same night the inspector made enquiries and obtained information that between 9.00 p.m. and 10.00 p.m. on 10th July, 1965 a timber lorry with red bonnet and loaded with sawn timber was seen travelling from the direction of Bentong towards Mentakab. At about 12.00 midnight the inspector saw a timber lorry C. 8200 with red bonnet parked in front of the Caltex petrol station on the Mentakab-Temerloh road. He sent for Kanniah who identified the lorry as being similar to the one involved in the accident. The inspector tried to locate the driver of the said lorry but was unsuccessful. He obtained particulars of the owner of the lorry from the nameplate which was fixed to the back of the driver's cabin and telephoned the sawmill in question but received no reply. He then detailed two police constables to guard the said lorry and to bring the vehicle to the police station if its driver turned up. He then went round Mentakab and Temerloh and discovered that no vehicle of the description as furnished by Kanniah had passed through any of the road blocks. He further checked the only three sawmills in Mentakab and discovered that there was no vehicle which answered to that description. In the light of those enquiries the inspector had grounds to suspect that lorry C. 8200 was the vehicle involved in the accident. Before returning to his quarters that night the inspector gave instructions to relieve the two police constables guarding the lorry.

At about 5.00 a.m. on 11th July, 1965 the inspector went to the Caltex petrol station and found that the said lorry had disappeared. He informed the O.C.P.D. who instructed him to contact the police station at Lanchang and Bukit Tinggi and, if possible, at Gombak to stop the said lorry for purposes of investigation. The first defendant rang up the police stations and instructed them to stop lorry C. 8200 as it had been involved in a fatal road accident and to inform him accordingly. At 7.20 a.m. the O.C.S. Bukit Tinggi received the instruction from the inspector. He then instructed PC. 22927 and another to proceed to the 20th milestone which was about a quarter-mile from the police station and to put up a road block in order to stop the said lorry. The police constables arrived at the 20th milestone at 7.55 a.m. He saw motor-lorry C.8200 loaded with sawn timber stationary in front of a coffee-shop. The said police constable, after having been told by the second plaintiff that he was the driver, informed him that he had received instructions from his O.C.S. that he (the driver) was suspected of being involved in a motor accident. At 8.05 a.m. the O.C.S. arrived at the scene. He was then asked by the driver what wrong he had done and the O.C.S. told him that he had received instructions from Mentakab to detain him on suspicion of being involved in a fatal road accident. The attendant was then within hearing distance of them.

There may be discrepancies about the time the inspector received the news from the O.C.S. Bukit Tinggi that the lorry had been detained. But after considering all the circumstances in this case I accept as a fact that the inspector received the news at 9.10 a.m. for otherwise the O.C.P.D., whose evidence I have no reason to reject, would not have received the information at 10.30 a.m. from the inspector.

Both the defendants and the owner of the lorry, Mr. Yap, arrived at Bukit Tinggi at 1.00 p.m. The O.C.S. then handed the case to his superiors.

Having stated the undisputed facts, I now consider the subsequent events as told by both sides which would seem to be completely at variance.

Both the plaintiffs testified that they stopped their lorry at Bukit Tinggi at about 7.00 a.m. Two police constables stopped them and told them that they had instructions to do so from their superiors and to wait for their arrival from Mentakab. But the plaintiffs vehemently denied that the police constables told them the reason for their detention. The attendant said that the police constables did not ask for their N.R.I.C.s or driving licences, but the driver said he remembered a sergeant took his driving licence and

N.R.I.C. which were never returned. As soon as the defendants together with Mr. Yap arrived at 2.00 p.m. they interrogated the plaintiffs separately. They denied that their lorry was involved in the accident. The attendant said that although he was told that the accident occurred in Mentakab he was not told by the defendants of the nature of the accident. On the other hand, the driver said that he was neither told the place of the accident nor the nature of it. The plaintiffs were then asked to drive their lorry to Bukit Tinggi police station. They arrived there at about 3.00 p.m. and from there the plaintiffs, defendants, and Mr. Yap left for Mentakab police station in the latter's car, arriving in Mentakab at about 5.00 p.m.

At the station the plaintiffs were further interrogated. The attendant told the defendants of his movements on 10th July and the morning of the 11th, but he said the defendants did not verify them. The driver also told the defendants of his movements. The inspector together with Mr. Yap then took the driver to town where the inspector questioned a stall-keeper and a barber. Both the plaintiffs were later detained in the police lock-up for the night.

At about 8.00 a.m. on 12th July, 1965 both the plaintiffs were handcuffed and brought to Temerloh by two police constables and a Chinese corporal. At Temerloh they were taken to an "upstairs" office where their handcuffs were removed. They were then asked by a Chinese who was not an interpreter to affix their signatures to a form written in English and which they were told was for the purposes of detention and food. The plaintiffs said that they were not told the reason for their detention and the nature and contents of the said form. Both the defendants were not there at that time. Having affixed their signatures on the form they were again handcuffed and taken to the magistrate's court 25 yards away where they had to wait for 15 to 30 minutes. The driver was given permission to telephone for his employer who came and asked by the plaintiffs to bail them out, but they were told by the corporal that since they had signed the form that could not be done. They denied that they were taken by the inspector before a magistrate who, through the court interpreter, explained to them that they were to be detained for one week. From the court the plaintiffs were taken back to Mentakab at 12.00 noon and detained in separate cells. In the afternoon both were interrogated by the inspector and at 5.00 p.m. on the following day, 13th July, 1965, they were released by the O.C.P.D.

The defendants' version is as follows. The plaintiffs were detained at 7.55 a.m. on 11th July, 1965 by PC. 22927. That was a Sunday. That police constable and subsequently the O.C.S. told the plaintiffs the reason for their detention. Their evidence was never challenged. If that was so, then the principle as reflected in *Christie* v. *Leachinsky* [1] that in ordinary circumstances an arrested man must be informed of the substantial ground of arrest has been fulfilled. The defendants arrived at the scene at 1.00 p.m. That was corroborated by the O.C.S. whose evidence on that point was not challenged. The defendants then interrogated the plaintiffs separately and jointly. It was argued somewhat mildly by counsel for the plaintiffs that the defendants had not stated correctly which person each had interrogated. In my view, if there was any discrepancy between their evidence and that of the plaintiffs they were of such a trivial nature that I do not consider it has any bearing on their veracity as witnesses.

With regard to the interrogation at Bukit Tinggi, the inspector said that he did inform the attendant of his strong suspicion that his lorry was involved in an accident and that as he was not satisfied with his explanation he was detaining him for further investigation. The driver did tell him that he was the driver of the lorry on 10th-11th July, but as it was the normal practice for timber lorries to carry two drivers he was not then in a position to establish the identity of the driver. The inspector did check the driver's movements on 10th July, 1965 but the two persons he had interrogated were reluctant to tell him anything. He further interrogated the attendant but was given the same story. He then informed the O.C.P.D. of the position and was instructed by him to detain the plaintiffs for further questioning. On Monday, 12th July, 1965 at 8.00 a.m. the inspector prepared the investigation diary and at 8.30 a.m. he took both the plaintiffs to the court. There is no resident magistrate in Temerloh. But there are five *ex-officio* magistrates at the district office a few yards away from the court house. The inspector saw the Chinese interpreter and registered the plaintiffs' names in the register. He then brought them before the *ex-officio* magistrate (D.W.3) who, after having taken cognisance of the case, explained to them through the interpreter that they were to be detained till 18th July, 1965. The inspector then took the plaintiffs back to the court house to wait for the warrant of remand which was being prepared by the court interpreter. From there he took both plaintiffs back to Mentakab and after that he recorded statements from witnesses including those of the plaintiffs. On 13th July, 1965 he had recorded all the relevant statements and at 3.00 p.m. the O.C.P.D. telephoned him to ask if he had completed investigations and to release the plaintiffs if there was insufficient evidence against them. After satisfying himself that there was insufficient evidence, the inspector took the investigation diary back to the magistrate who signed the plaintiffs' release.

The O.C.P.D. did not come into the picture on 12th July, 1965. On returning to the police station from Bukit Tinggi at 5.00 p.m. on 11th July, 1965 he instructed the inspector to continue his investigation and, if necessary, to obtain a court order under section 117 of the Criminal Procedure Code. On 13th July, 1965 when he was told by the inspector that there was insufficient evidence to establish a case against the plaintiffs he instructed the inspector to release them.

The *ex-officio* magistrate (D.W.3) testified that between 8.30 a.m. and 9.00 a.m. on 12th July, 1965 the inspector brought the two plaintiffs before him for the purpose of detention under section 117 of the Criminal Procedure Code. After due consideration he approved the detention for a week. But he did not sign the warrant of remand as he remembered that he went out after that. On 13th July, 1965 he signed for their release. An attempt was made to discredit the witness. Questions were put to him to suggest that the inspector never brought the two plaintiffs before him and that the detention order which he had approved was signed subsequently. That, to my mind, is an attack on the character of what to me seems to be a straightforward and simple witness who had no apparent motive to mislead or deceive the court. The magistrate's evidence is corroborated by the evidence of the court interpreter (D.W.7) and the other *ex-officio* magistrate (D.W.4). The interpreter said that on the morning of 12th July, 1965 the inspector brought the plaintiffs to the court house. From there all four went to see D.W.3 at about 9.00 a.m. for the purpose of obtaining a detention order. He said that he had explained to the plaintiffs that they were to be detained for one week. In cross-examination he said that he did not ask any of the plaintiffs to sign any form. The other *ex-officio* magistrate (D.W.4) testified that he had signed the warrant of remand on 12th July, 1965 after ascertaining that the detention order had been approved. If it was contended that the failure of the inspector to produce the warrant and the suspects before the second magistrate is vital to the validity of the warrant I think it is only necessary to state the contention to show that it is utterly unsound.

Of the two, I would prefer the defendants' version. To me, the plaintiffs appeared vague and unconvincing. Each had said that they were stopped by the police constables at 7.00 a.m. while the police constable in question said, and his evidence was unshaken, that he detained the plaintiffs at 7.55 a.m. — a difference of almost an hour. Again, each of the plaintiffs said that the reason for his detention was not given to him. That evidence, if it is tangible, has been negatived by the police constable and O.C.S. whose evidence was also not challenged. The plaintiffs said that the defendants arrived at Bukit Tinggi at 1.00 p.m. while the defendants themselves said that they arrived at 2.00 p.m. That evidence was substantiated by the O.C.S. whose evidence I accept. The plaintiffs said that they were asked by a Chinese who was not an interpreter to sign a form. The court interpreter denied that he had ever asked them to sign any form. The *ex-officio* magistrate was not even asked in cross-examination whether he had asked the plaintiffs to sign any form. In the absence of any evidence to the contrary, it is fair to infer that he did not ask the plaintiffs to sign any form. The plaintiffs contended that the inspector did not take them before the magistrate (D.W.3). That was set right by the unshaken evidence of the court interpreter.

Summing up, I have no hesitation to conclude that the plaintiffs' evidence is unsatisfactory and present improbable features. On the other hand, the defendants' story sounded reasonably credible.

The extent of the power of a police officer to arrest without a warrant a person whom he suspects of having committed a seizable offence is enumerated in section 23(i)(a) of the Criminal Procedure Code, and the procedure to be taken after arrest is contained in section 28. To justify a police officer to arrest under section 23(i)(a) there must be a reasonable complaint or suspicion or credible information of the person to be arrested having been concerned in a seizable offence. It is not possible to lay down any abstract rule as to whether it may or it may not be a reasonable suspicion or complaint to insist upon without reference to the particular facts and circumstances which are established in the individual case. In any event it must be founded on some tangible legal evidence within the congnisance of the police officer to justify a reasonable person in concluding that the suspect is guilty of a seizable crime. The evidence need not be of such a nature as to constitute proof or to convince a court of law beyond a reasonable doubt; it may, upon examination after arrest, turn out to be insubstantial so long as the arresting officer had some solid basis for believing it to be substantial at the time he acted. Thus it was held in *Re Charu Chandra Majumdar* [2] that the reasonable suspicion and credible information must be based upon definite facts which the police officer effecting the arrest must consider for himself before he acts under section 54 of the Indian Criminal Procedure Code which corresponds with section 23 of our Code. In *Sabodh Chandra* v. *Emperor*,[3] the court had to determine what constituted a reasonable complaint or suspicion or credible information under section 54 of the Indian Criminal Procedure Code where the only information the Calcutta police acted upon in effecting arrest was two telegrams

the first of which, in addition to personal description, said, "Wanted for embezzelment"; and the second, in addition to suggestion about possible movements, said, "Embezzlement of money to the value of a couple of lakhs of rupees". Mukerji J. in a judgment of the court said that "the circumstances of each particular case must determine the question as to what is a reasonable complaint or suspicion; but at least this much is clear, that no mere vague surmise or information must be the basis thereof but some definite fact tending to throw suspicion on the arrested person".

In my opinion, a reasonable complaint or suspicion may be equated with reasonable or probable cause as found in the English authorities. I find support in this assertion in a passage of Whyatt C.J. in *Tan Kay Teck & Anor.* v. *Attorney-General* [4] where, after noting that in *John Lewis & Co. Ltd.* v. *Tims* [5] an objective test is required of what constitutes a reasonable complaint, said that the reasonable or probable cause required at common law to justify an arrest without warrant of a person suspected of felony is in *pari materia* with arrest under statutory powers upon a reasonable complaint and that in his view the same principles apply.

What is a reasonable complaint or suspicion or, to use the English alternative phrase, reasonable or probable cause to justify an arrest without warrant is in my view a state of facts which would lead a man of ordinary care and prudence to believe or entertain an honest and strong suspicion that the suspect is guilty of an offence. A recent authority which is directly germane to our present case is afforded by *Dallison* v. *Caffery.* [6] In that case, Diplock L.J. said at p. 619:—

"The rule that a person who arrests, detains or prosecutes a suspected felon commits no actionable wrong if he acts honestly and reasonably, applies alike to private persons and to police officers, but what is reasonable conduct in the circumstances may differ according to whether the arrestor is a private person or a police officer. One difference, too well settled now by authority to be altered, is that a private person can only arrest if a felony has in fact been committed, whereas a police officer can do so if he reasonably believes that a felony has been committed; but this, together with the distinction between felony and misdemeanour, is I believe the only respect in which the common law has become fossilized. In all others the rule of reasonableness applies. Where a felony has been committed, a person, whether or not he is a police officer, acts reasonably in making an arrest without a warrant if the facts which he himself knows or of which he has been credibly informed at the time of the arrest make it probable that the person arrested committed the felony. That is what constitutes in law reasonable and probable cause for the arrest. . . . What is reasonable conduct on the part of a police officer in this respect may not be the same as what would be reasonable conduct on the part of a private arrestor".

In another passage he said:—

"One word about the requirement that the arrestor or prosecutor should act honestly as well as reasonably. In this context it means no more than that he himself at the time believed that there was reasonable and probable cause, in the sense that I have defined it above, for the arrest or for the prosecution as the case may be. The test whether there was reasonable and probable cause for the arrest or prosecution is an objective one, namely, whether a reasonable man, assumed to know the law and possessed of the information which in fact was possessed by the defendant, would believe that there was reasonable and probable cause. Where that test is satisfied, the onus lies on the person who has been arrested or prosecuted to establish that his arrestor or prosecutor did not in fact believe what *ex hypothesi* he would have believed had he been reasonable (see *Herniman* v. *Smith,* [7] per Lord Atkin)".

The present case therefore boils down to this: when the police at Bukit Tinggi were told to stop and did stop the plaintiffs and their lorry, were the facts within the cognisance of the defendants founded upon some tangible legal evidence which in the circumstances constituted reasonable complaint or suspicion? There is overwhelming evidence that at 9.25 p.m. on 10th July, 1965 a fatal road accident had occurred at the second milestone Karak Road and a motor lorry with a trailer loaded with sawn timber was involved. The said lorry did not stop but proceeded in the direction of Mentakab. It was clearly a hit-and-run case. *Prima facie* an offence under section 304A of the Penal Code, a seizable offence, was disclosed. Where that is so, it is in the public interest that the culprit should be caught and punished. Acting on the complaint, the inspector started investigations. He interrogated the complainant who informed him that the lorry in question had a red bonnet. The inspector subsequently informed the O.C.P.D. who gave instructions to put up road blocks. He later visited the scene together with the complainant and found broken pieces of glass and sawn timber. He also visited the mortuary and saw the dead body. That same night he received information that between 9.00 p.m. and 10.00 p.m. a red bonnet timber lorry was seen heading for Mentakab. At about midnight the inspector found a red bonnet timber lorry, C. 8200, parked in front of the Caltex petrol station on the Mentakab-Temerloh road which answered the description given by the complainant earlier. He brought the complainant to the said lorry and the latter was convinced that it was similar to the one involved in the accident. He made every effort to trace the driver but was not successful. Two police constables were detailed to guard the said lorry with instructions to bring it to the police station when the driver turned up. The inspector discovered that the owner of the said lorry lived at the 5th milestone Karak Road. He therefore tried to get in touch with him but was also not successful. He checked the road blocks at Mentakab and Temerloh and learned that no timber lorry answering to the description given by the complainant had passed through them. He also checked the three sawmills in Mentakab and found that there was no

timber lorry answering to that description. Suspicion focussed reasonably enough on the said lorry and it goes without saying on the driver. His suspicion was later confirmed by the disappearance of the said lorry in the early hours of the morning of 11th July, 1965 which was a Sunday. He notified his O.C.P.D. who instructed that road blocks be put up at Lanchang and Bukit Tinggi. The inspector notified the respective O.C.S.s, and at 9.10 a.m. news was received from the O.C.S. Bukit Tinggi that the said lorry had been detained. The facts within the cognisance of the defendants then were therefore circumstantial. There was no direct eye-witness to establish the identity of the driver. The defendants proceeded to Bukit Tinggi and interrogated the plaintiffs. They were told by the driver himself that he was driving the said lorry on 10th July, 1965. It was suggested by counsel for the plaintiffs that at that stage there was not enough evidence to connect the attendant with the offence in view of the admission of the driver. That may be so, but that was not tangible evidence. That piece of evidence is inadmissible in a court of law. There is the possibility that the driver was lying. The defendants had still to find independent evidence to establish the identity of the driver. The defendants were also confronted by the fact that it is the normal practice for timber lorries to carry two drivers. The attendant of a timber lorry is also a licenced driver. In any event the question to be posed is not whether there is evidence to constitute proof or to convince a court of law beyond a reasonable doubt but whether the defendants had acted honestly and reasonably. The defendants decided to bring both the plaintiffs back to Mentakab for further interrogation. At Mentakab both the plaintiffs told the defendants of their movements at the relevant time. The driver told the inspector that he had taken food at a shop and afterwards had his hair cut. He willingly cooperated in leading the inspector to the shops but the interviews produced no result. The inspector gained no assistance from the persons whom he interviewed. The case presented formidable problems to the inspector and he therefore briefed his O.C.P.D. of the latest situation and was instructed to carry on with the investigation and if necessary to obtain a remand order under section 117 of the Criminal Procedure Code on the following day (Monday) which the inspector in fact obtained. The investigation ended that night and the plaintiffs were placed in the police lock-up. Why were they not granted police bail that night? The defendants considered that their investigation was not completed and in my view the measures taken were perfectly reasonable in the circumstances in order to do justice not only to the plaintiffs but also to the State. It is apt that I cite a passage from the judgment of Lord Denning M.R. in *Dallison* v. *Caffrey*, *supra*. At p. 617 the Master of the Rolls said:—

> "When a constable has taken into custody a person reasonably suspected of felony, he can do what is reasonable to investigate the matter, and to see whether the suspicions are supported or not by further evidence. He can, for instance, take the person suspected to his own house to see whether any of the stolen property is there; else it may be removed and valuable evidence lost. He can take the person suspected to the place where he says that he was working, for there he may find persons to confirm or refute his *alibi*. The constable can put the suspect up on an identification parade to see if he is picked out by the witnesses. So long as such measures are taken reasonably, they are an important adjunct to the administration of justice; by which I mean, of course, justice not only to the man himself but also to the community at large. The measures must, however, be reasonable".

It is my opinion that the defendants had acted honestly and reasonably founded on such facts which I consider established a reasonable complaint or suspicion.

That is not the end of the matter. It was said on behalf of the plaintiffs that they were illegally detained for more than 24 hours. When a police officer has taken a person into custody he shall without unnecessary delay take him before a magistrate. The person arrested cannot be detained by the police for more than 24 hours unless the police had earlier obtained a remand order under section 117 of the Criminal Procedure Code. The period of 24 hours must exclude the necessary time taken for the journey from the place of arrest to the magistrate's court. This procedure is to my mind founded on the theory that where policemen are judges, individual liberty and dignity cannot long survive. Therefore the section provides for an independent and impartial observer to judge the validity of the arrest. In the *State of Hyderabad* v. *Kankadu* [7] the question for decision was whether the accused was in lawful custody after the expiry of 24 hours from 11.30 p.m. on 24th June, 1952. In that case the accused was arrested at 11.30 p.m. on 24th June, 1952 and was kept in the lock-up. At 8.00 p.m. on 25th June, 1952 the police took him to the magistrate at Narayanpet for a remand order. But the magistrate was on leave and the police were directed to take the accused for purposes of remand to the district magistrate at Mahbubnagar which is about 50 to 60 miles distant. There was no train or bus available for this purpose. Accused was therefore kept again in the police lock-up to await journey by the next available conveyance which was at 8.00 a.m. on 26th June, 1952. Some time between 3.00 a.m. and 6.00 a.m. on 26th June, 1952 the accused escaped from the lock-up and was not re-arrested until 9th July, 1952. The court held that the accused was in lawful custody, saying that the 24 hours of detention under the section were to be counted up to the time when the accused left the station.

The question for decision here is whether the accused was in lawful custody after the expiry of 24 hours from 7.55 a.m. on 11th July, 1965. It is evident from the facts in the present case that up to the time the plaintiffs left the police station at 8.30 a.m. on 12th July, 1965 they were already in police custody for 24 hours 35 minutes. Section 28 of the Criminal Procedure Code expressly states that the necessary time taken for the journey from Bukit Tinggi to the magistrate's court at Temerloh must be excluded. The distance between these two places I take it to be more than 50 miles of hilly country which in normal circumstances would take more than an hour. It is therefore fair to say that in the circumstances the plaintiffs were in lawful custody well within 24 hours.

If I am wrong in the calculation of time, I hold that 11th July, 1965 being a Sunday, it was not possible for the plaintiffs to be produced before the *ex-officio* magistrate for purposes of remand. Had they left at 7.55 a.m. on Monday 12th July, 1965 (which was within the 24-hour period) they would not, in my opinion, have been produced until 8.30 a.m. or thereabout, bearing in mind that there is no resident magistrate in Temerloh and that it would in any event be some time to take the plaintiffs from the court house to the district office.

I will therefore dismiss both the plaintiffs' claim with costs.

Claim dismissed.

Solicitors: *Xavier & Thambiah.*

LEE YOU SUEN v. LIEW LOK & ORS.

[F.C. (Barakbah L.P., Azmi C.J. (Malaya) and Ong Hock Thye F.J.) March 28, 1967]

[K.L. — Federal Court Civil Appeal Nos. X.29, X.30 & X.31 of 1966]

Negligence — Motor accident — Headlong collision — Allegation of contributory negligence — Rejected by Federal Court.

Damages — Headlong collision — Allegation of contributory negligence — Review of evidence on appeal.

As a result of a headlong collision between a passenger omnibus and a Morris Minor, the driver and all four passengers in the smaller vehicle lost their lives. Subsequently three actions arose in the High Court at Ipoh, in which representatives of the passengers claimed damages against the representatives of the deceased driver and the driver of the bus, alleging negligence on the part of both drivers or either of them. The particulars of negligence, in the usual form, included failure to keep a proper look-out, driving at an excessive speed and driving onto the wrong side of the road. The actions were tried together by Gill J., who held the drivers of the car and bus liable in the proportion of 25% and 75% respectively.

The second defendant appealed against such decision on the ground that the other driver should have been held solely to blame or, at any rate, that the other's assessed share of blame should have been considerably higher.

Held: (1) granting the appellant every indulgence and making every allowance for inaccuracies in his estimate of distance, the irresistible inference from his own account was that he was taking no pains whatever to keep any look-out at all but negligently assumed that the lonely road he travelled would continue so round the bend. This fact and the evidence of encroachment were not mutually consistent but each fortified the other. There was therefore clear evidence of negligence on the part of the appellant;

(2) there was no evidence of speeding by the deceased driver, except what the appellant alleged to exonerate himself. The order of court below should therefore be set aside, and the award of damages made against the appellant solely.

Case referred to:—

(1) *France* v. *Parkinson* [1954] 1 W.L.R. 581, 584.

FEDERAL COURT.

W. S. W. Davidson for the appellant.

Richard Ho for 1st respondent.

G. Tara Singh Sidhu for the 2nd respondent.

Cur. Adv. Vult.

Ong Hock Thye F.J.: As a result of a headlong collision between a passenger omnibus and a Morris Minor, the driver and all four passengers in the smaller vehicle lost their lives. Subsequently three actions arose in the High Court at Ipoh, in which the representatives of the passengers claimed damages against the representative of the deceased driver and the driver of the bus, alleging negligence on the part of both drivers or either of them. The particulars of negligence, in the usual form, included failure to keep a proper look-out, driving at an excessive speed and driving onto the wrong side of the road. The actions were tried together by Gill J., who held the drivers of the car and bus liable in the proportion of 25% and 75% respectively.

The second defendant now appeals against such decision on the ground that the other driver should have been held solely to blame or, at any rate, that the other's assessed share of blame should have been considerably higher. Although the representative of the deceased driver has not cross-appealed, the effect of these appeals, of course, is to reopen the question of liability so as to leave it entirely at large.

The evidence was extremely meagre. Apart from the fact that death had left no witness among those travelling in the Morris Minor, there were no eye-witnesses of the accident, other than this appellant, because it occurred on a lonely stretch of road devoid of pedestrian or other traffic. In the result, the only evidence adduced on the part of the plaintiffs — apart from evidence affecting the quantum of damages, as to which no question is raised — consists of the testimony of the investigating police officer who produced the plan he had made of the scene, half-a-dozen photographs and the Vehicles Examiner's report on the two vehicles. The